



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/883,685 06/27/97 LANGHANS

R	59-118-3
EXAMINER	

QM22/0626

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GARTUNAN, C	PAPER NUMBER
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DATE MAILED:

06/26/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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45

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Commissioner of Patents and Trademarks

See Attached.

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MISCELLANEOUS LETTER

This communication is in response to the disposition of Appellant's Petition filed on April 23, 2001, Paper No. 43. The following summarizes the status of each of the communications since Appellant filed the Supplement to Appeal Brief on March 23, 2001 in light of the fact that an Examiner's Answer was mailed prior to this supplement.

Re: Supplement to Appeal Brief filed on March 23, 2001, Paper No. 40.

Appellant's submission of this paper was appropriate only to the extent that Appellant is permitted to file amendments, affidavits, or any other papers relating to the appeal after an Examiner's Answer but prior to a decision by the Board. MPEP 1210. However, the disposition of this paper by the Examiner was in error. The Supplement to Appeal Brief was treated as a Supplemental Brief which resulted in the mailing of the Notice of Defective Brief, Paper No. 41. None of the previous communications required a Supplemental Brief *per se*, e.g. as a result of reopening of prosecution, remand by the Board, etc. Thus, the Appellant should have been notified that the supplement had been received but not considered until at such time the Board requires the Examiner to do so via a remand.

Re: Notice of Defective Appeal mailed on April 5, 2001, Paper No. 41.

This Notice was in response to Appellant's submission of the Supplement to the Appeal Brief as noted *supra*. This would have been the appropriate response if in fact the

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Supplement to the Appeal Brief should have been treated as a Supplemental Brief.

However, the Examiner's response was improper as noted above.

Re: Letter Re Supplement to Appeal Brief filed on March 26, 2001, Paper No. 42.

Again, this paper was appropriate only to the extent noted above. This Letter added nothing substantive to Appellant's previous submission except for highlighting portions in the previous submission. The Examiner did not act on this letter. However, the Examiner should have sent the Appellant a miscellaneous communication that the Letter was received but not considered.

Re: Petition Re Supervisory Review filed on May 24, 2001, Paper No. 43.

The Petition was received and DISMISSED without prejudice. The decision regarding Appellant's petition was mailed on June 19, 2001.

CLARIFICATIONS:

Regarding the Supplement to the Appeal Brief, Paper No. 40, this paper should not have been treated as a Supplemental Brief. The Appellant merely submitted alleged evidence in support of the Appeal. As such, this paper should have titled as "Evidence" and not a "Supplement" *per se*, and it should not have been entered as a Supplemental Appeal Brief after an Examiner's Answer.

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The mailing of the Examiner's Answer prior to receiving a reply to the Notice of Defective Appeal Brief, Paper No. 41, was appropriate for the following reasons.

First, as noted above, the Examiner erred in sending out this notice. It should have been a miscellaneous communication noting that the Supplement was received.

Second, the Examiner responded in a timely manner to the Appeal Brief filed on February 28, 2001, Paper No. 36 which in turn was filed by the Appellant in response to the first Notice of Defective Appeal Brief mailed January 29, 2001, Paper No. 34. The new Appeal Brief addressed the informalities noted in the Notice and the new Appeal Brief did not contain any new informalities that would prevent the Examiner from responding, the Examiner took the initiative to write up an Examiner's Answer.


Third, the Examiner's Answer was completed on or about March 14, 2001 but mailed on March 21, 2001. The Office did not receive Appellant's Supplement to the Appeal Brief until March 23, 2001. Thus, the mailing date of the Examiner's Answer should be controlling.

CONCLUSION

Therefore, Appellant is hereby notified that the Supplement to the Appeal Brief and other papers related thereto have been received by the Office, but they will not be considered unless the application is remanded by the Board for that express purpose due to the fact that these communications were filed after the Examiner's Answer but

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prior to a decision by the Board. They have merely been noted as being received in the Office.

cg 
June 19, 2001

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